

**BEFORE THE JUDICIAL PANEL ON
MULTI-DISTRICT LITIGATION**

In re:

PHARMACEUTICAL INDUSTRY AVERAGE
WHOLESALE PRICE LITIGATION

MDL DOCKET NO. 1456

**[PLAINTIFFS' PROPOSED] CASE MANAGEMENT ORDER REGARDING PHASED
DISCOVERY AND RELATED PRETRIAL ISSUES**

This matter comes before the Court after the Court's ruling on the defendants' motion to dismiss the Amended Master Consolidated Complaint. The Court enters the following schedule and order to govern the next phases of the litigation.

I. PHASING AND TIMING OF DISCOVERY, MOTION PRACTICE AND TRIAL

1. Discovery shall be permissible with respect to all parties, claims and issues not dismissed under the February 24, 2004 Memorandum and Order. Discovery, motion practice and trial shall occur in two phases.

2. Phase 1 shall consist of a "fast track" in which five defendants will litigate all phases of the case through summary judgment. The cases against those five companies shall proceed on the Phase 1 schedule set below. Phase 2 shall consist of a "regular track." It is the Court's intent that Phase 2 proceed on all issues, however the schedule will be staggered behind Phase 1 to allow for the Phase 1 rulings to potentially assist in narrowing the litigated issues. Under both Phases discovery is permitted on all drugs in the AMCC.

3. Discovery shall go forward on the Together Rx claims on the Phase 1 schedule. Discovery on Together Rx shall go forward without limitation but it is the Court's intent to not have discovery on each of the Together Rx drugs, except discovery respecting particular Together Rx drugs shall be permitted limited to facts relevant to the antitrust issues of the Together Rx allegations such as class-wide impact and damages.

II. ADDITIONAL DISCOVERY RULES

1. To the extent they have not done so, all defendants are directed to supplement their document productions under the order of this Court dated October 28, 2002 (relating to production of documents produced to governmental bodies concerning AWP matters) by producing all documents produced by any defendant in response to recent subpoenas issued by the House Energy and Commerce Committee, or any other governmental body, by making such documents available to counsel for the plaintiffs for inspection and photocopying within 30 days. There will be no extensions of time for this production. To the extent documents were withheld from these productions on the grounds of privilege, a log shall be provided as required herein.

2. The identification of a drug on the Phase 1 list includes all NDCs for that drug, including NDCs not in AMCC.

3. There shall be no redaction of documents on any basis other than a bona fide claim of a recognized lawful privilege. Among other things, there shall be no redaction of documents on the basis of a claim of irrelevancy, or on the basis of a claim that a portion of the document contains information as to non-Phase 1 drugs.

4. No party shall stamp "confidential" or watermark on the text of documents, but will do so at the bottom or on a margin so as to not render the text of a document illegible or hard to read.

5. Any documents available in an electronic format shall be so provided in that format, *i.e.*, in an identical, usable electronic format. If issues regarding compatibility of computer systems and software arise, the producing party shall contact the other party and resolve those matters.

6. Defendants shall file a written response to any outstanding document requests within 30 days.

7. A responding party to an initial document request shall complete production of all documents within ninety (90) days of service of such request.

8. Privilege logs shall be provided 14 days after a production, and shall cover each document withheld from production, as well as each redaction from a document produced. A production occurs when a group of documents is provided to another party. A log shall be accompanied by an affidavit(s) sufficient to make a prima facie claim of privilege over each document and each redaction withheld from production.

9. Each defendant shall, if called upon to do so, produce 30(b)(6) witnesses within 45 days of such a request.

10. A party may provide a "three-week deposition notice" under which such party provides at least 21 days notice for a proposed deposition. A responding party may suggest an alternative date no later than seven more days from the original notice. Absent relief obtained from this Court *before* the date for such deposition, a party shall be subject to appropriate discovery sanction(s) for failing to produce the witness on the date, or rescheduled date, for such deposition.

11. If a party is producing documents by way of photocopying, the party shall not reduce (or enlarge) in size the photocopy from the size of the original photocopy.

III. PHASE 1 SCHEDULE

The following five companies from the AMCC are subject to the Phase 1 fast track: AstraZeneca, The BMS Group (Bristol-Myers, OTN and Apothecan); The GSK Group (GlaxoSmithKline, SmithKline Beecham, Glaxo Wellcome); Johnson and Johnson Group (J&J, Centocor and Ortho); and The Schering-Plough Group (Schering, Warrick).

The schedule shall be as follows for Phase 1 and Together Rx:

1. Plaintiffs' Motion for Class Certification on Phase 1 shall be filed by October 1, 2004.
2. Plaintiffs' Disclosure of Expert Opinions in Support of Motion for Class Certification by October 1, 2004.
3. Discovery of Plaintiffs' Experts on Class Certification completed by November 5, 2004.

4. Defendants' Opposition to class certification to be filed by November 15, 2004, along with any expert reports.

5. Discovery of defendants' experts completed by December 15, 2004.

6. Plaintiffs' Reply on Class Certification filed by January 14, 2005.

7. Any surreply shall be filed on January 21, 2005.

8. Close of Phase 1 Fact Discovery on January 21, 2005.

9. Hearing on Class Certification on February __, 2005.

10. Plaintiffs serve liability expert reports on January 30, 2005.

11. Defendants serve Expert Reports on liability on February 28, 2005.

12. Close of Expert Discovery on April 15, 2005.

13. Summary Judgment Motions filed no later than April 15, 2005.

14. Oppositions due May 30, 2005.

15. Replies due on June 15, 2005.

16. Any surreply on July 1, 2005.

IV. PHASE 2 SCHEDULE

1. After the Court's ruling on the Phase 1 class certification motion, the parties shall propose a Phase 2 briefing schedule on class certification.

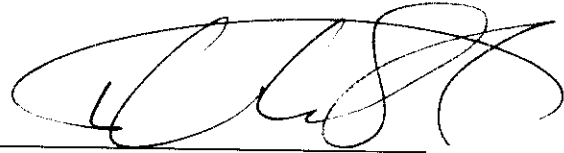
2. Fact discovery on Phase 2 will close on October 1, 2005.

V. MISCELLANEOUS MATTERS

To protect the integrity of the MDL process defendants shall notify the plaintiffs of any attempts to settle any of the claims before this Court in another jurisdiction upon commencement of such discussions. Any discussions of settlement that would affect any claims brought in this litigation, other than claims of an individual plaintiff or class member, must be conducted or authorized by Plaintiffs' Co-Lead Counsel. Any proposed settlement that resolves, in whole or part, the claims brought in this action shall first be subject to review and approval by the Court in this litigation.

DATED: March 12, 2004

By



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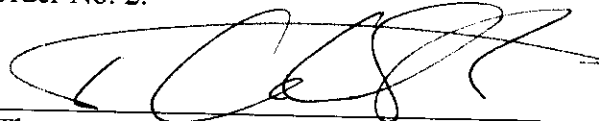
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**ADDITIONAL ATTORNEYS FOR
PLAINTIFFS**

CERTIFICATE OF SERVICE

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing [Plaintiffs' Proposed] Case Management Order Regarding Phased Discovery and Related Pretrial Issues to be served on all counsel of record electronically on March 12, 2004, pursuant to Section D of Case Management Order No. 2.

A handwritten signature in black ink, appearing to read 'T. Sobol', is written over a horizontal line.

Thomas M. Sobol, Esq.

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March 12, 2004

VIA HAND DELIVERY

Clerk's Office
United States District Court
District of Massachusetts
One Courthouse Way, Suite 2300
Boston, MA 02210

Re: In Re: Pharmaceutical Industry Average Wholesale Price Litigation MDL No.
1456

Dear Sir/Madam:

Enclosed for filing in the above-captioned matter please find the following document:

1. [Plaintiffs' Proposed] Case Management Order Regarding Phased Discovery and Related Pretrial Issues.

Please acknowledge this filing by date-stamping the enclosed copy of this letter and returning it to the waiting messenger.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "T. Sobol", written over a horizontal line.

Thomas M. Sobol

Enclosure

cc: All counsel of record (Via VeriLaw)